

SENATE BILL NO. 694

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Senator Obenshain)

A BILL to amend and reenact §§ 15.2-1901, 25.1-100, 25.1-204, 25.1-230.1, 25.1-237, 25.1-245.1, 25.1-307, 25.1-308, 25.1-315, 25.1-318, 33.2-1016, 33.2-1018, 33.2-1019, 33.2-1022, and 33.2-1026 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3 of Title 25.1 a section numbered 25.1-319 and by adding a section numbered 33.2-1029.1; and to repeal § 33.2-1029 of the Code of Virginia, relating to eminent domain.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1901, 25.1-100, 25.1-204, 25.1-230.1, 25.1-237, 25.1-245.1, 25.1-307, 25.1-308, 25.1-315, 25.1-318, 33.2-1016, 33.2-1018, 33.2-1019, 33.2-1022, and 33.2-1026 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 25.1 a section numbered 25.1-319 and by adding a section numbered 33.2-1029.1 as follows:

§ 15.2-1901. Condemnation authority.

A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection B.

B. A locality may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580.

27 C. Notwithstanding any other provision of law, general or special, no locality shall condition or
 28 delay the timely consideration, advancement, or approval of any application for or grant of any permit or
 29 other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied,
 30 of allowing the ~~locality to condemn~~ condemnation or ~~otherwise acquire~~ acquisition of the property or to
 31 commence any process to consider whether to undertake condemnation or acquisition of the property.

32 **§ 25.1-100. Definitions.**

33 As used in this title, unless the context requires a different meaning:

34 "Appraisal" means a written statement independently and impartially prepared by a qualified
 35 appraiser setting forth an opinion of defined value of an adequately described property as of a specific
 36 date, supported by the presentation and analysis of relevant market information.

37 "Body determining just compensation" means a panel of commissioners empaneled pursuant to §
 38 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a
 39 jury is appointed or empaneled.

40 "Court" means the court having jurisdiction as provided in § 25.1-201.

41 "Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing
 42 of the petition pursuant to § 25.1-205, whichever occurs first.

43 "Freeholder" means any person owning an interest in land in fee, including a person owning a
 44 condominium unit.

45 "Land" means real estate and all rights and appurtenances thereto, together with the structures and
 46 other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

47 "Locality" or "local government" means a county, city, or town, as the context may require.

48 "Lost access" means ~~a material impairment of direct~~ change of vehicular access to property, ~~a~~
 49 ~~portion of which has been taken or damaged as set out in subsection B of § 25.1-230.1. This definition of~~
 50 ~~the term "lost access" shall not diminish any existing right or remedy, and shall not create any new right~~
 51 ~~or remedy other than to allow the body determining just compensation to consider a change in access in~~
 52 ~~awarding just compensation~~ that is caused by a public use project for which the eminent domain power
 53 has been exercised against the property and which results in a diminution in the value of the property.

54 "Lost profits" means a loss of business profits, as defined in § 25.1-230.1, that is suffered as a
55 result of a taking of the property on which a business or farm operation is located, subject to adjustment
56 using generally accepted accounting principles consistently applied, from a business or farm operation for
57 a period not to exceed three years from the later of (i) the date of valuation or (ii) the date the state agency
58 or its contractor prevents the owner from using the land or any of the owner's other property rights are
59 taken. The person claiming lost profits is entitled to compensation whether part of the property or the
60 entire parcel of property is taken. In order to qualify for an award of lost profits, one of the following
61 conditions shall be met: (a) the business is owned by the owner of the property taken, or by a tenant whose
62 leasehold interest grants the tenant exclusive possession of substantially all the property taken, or (b) the
63 farm operation is operated by the owner of the property taken, or by a tenant using for a farm operation
64 the property taken, to the extent that the loss is determined and proven pursuant to subsection C of § 25.1-
65 230.1. This definition of the term "lost profits" shall not create any new right or remedy or diminish any
66 existing right or remedy other than to allow the body determining just compensation to consider lost profits
67 in awarding just compensation if a person asserts a right to lost profits in a claim for compensation.

68 "Owner" means any person who owns property, provided that the person's ownership of the
69 property is of record in the land records of the clerk's office of the circuit court of the county or city where
70 the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,
71 any person with a security interest in the property, or any person with a judgment or lien against the
72 property. This definition of the term "owner" shall not affect in any way the valuation of property.

73 "Person" means any individual; firm; cooperative; association; corporation; limited liability
74 company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver;
75 trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether
76 appointed by a court or otherwise; club, society or other group or combination acting as a unit; the
77 Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other
78 political subdivision or any department, agency or instrumentality thereof; or any interstate body to which
79 the Commonwealth is a party.

80 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of
81 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a
82 state agency.

83 "Property" means land and personal property, and any right, title, interest, estate or claim in or to
84 such property.

85 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii)
86 public authority, municipal corporation, local governmental unit or political subdivision of the
87 Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority
88 to acquire property by eminent domain under state law; or (iv) two or more of the aforementioned that
89 carry out projects that cause persons to be displaced.

90 "State institution" means any (i) institution enumerated in § 23.1-1100 or (ii) state hospital or state
91 training center operated by the Department of Behavioral Health and Developmental Services.

92 **§ 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.**

93 A. A condemnor shall not institute proceedings to condemn property until a bona fide but
94 ineffectual effort to purchase from the owner the property sought to be condemned has been made.
95 However, such effort shall not be required if the consent cannot be obtained because one or more of the
96 owners (i) is a person under a disability or is otherwise unable to convey legal title to such property, (ii)
97 is unknown, or (iii) cannot with reasonable diligence be found within this Commonwealth.

98 B. Such bona fide effort shall include delivery of, or attempt to deliver, a written offer to acquire
99 accompanied by a written statement to the owner that explains the factual basis for the condemnor's offer.
100 The written statement shall include a description of the public use for which it is necessary to acquire the
101 owner's property and shall contain a certification that the acquisition has been reviewed by the condemnor
102 for purposes of complying with § 1-219.1. The written offer shall be made upon the state agency's
103 letterhead and shall be signed by an authorized employee of such state agency.

104 C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417,
105 such written statement shall include a complete copy of the appraisal of the property upon which such
106 offer is based. If the condemnor obtains more than one appraisal, such written statement shall include a

107 copy of all appraisals obtained prior to making an offer to acquire or initiating negotiations for the real
108 property.

109 D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to
110 acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit
111 pursuant to Chapter 3 (§ 25.1-300 et seq.) or § 33.2-1019, shall (i) conduct or cause to be conducted an
112 examination of title to the property in order to ascertain the identity of each owner of such property and
113 to determine the nature and extent of such owner's interests in the property ~~and~~, which examination of
114 title shall be for at least 60 years; (ii) provide to such owner or owners a copy of the report ~~of status of~~
115 ~~title~~ showing the examination of title; and (iii) provide to such owner or owners a copy of all recorded
116 instruments within the 60-year title history of such property, including all deeds of trust, releases, liens,
117 deeds, or other instruments identified in the report.

118 E. A state agency's acquisition of real property in connection with any programs or projects
119 pursuant to this title or Title 33.2 shall be conducted in accordance with the following provisions:

120 1. Before making an offer to acquire or initiating any related negotiations for real property, the
121 state agency shall establish an amount which it believes to be just compensation therefor and shall make
122 a prompt offer to acquire the property for the full amount so established. In no event shall such amount be
123 less than the state agency's approved appraisal of the fair market value of such property, if such an
124 appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the
125 property has physically changed in a material and substantial way since the current assessment date such
126 that the real estate tax assessment no longer represents a fair valuation of the property, when the entire
127 parcel for which the assessment is made is to be acquired, whichever is greater. Any decrease or increase
128 in the fair market value of real property prior to the date of valuation caused by the public improvement
129 for which such property is acquired, or by the likelihood that the property would be acquired for such
130 improvement, other than that due to physical deterioration within the reasonable control of the owner,
131 shall be disregarded in determining the compensation for the property. The state agency concerned shall
132 provide the owner of real property to be acquired with a written statement of, and summary of the basis
133 for, the amount it established as just compensation, and, if an appraisal is required or obtained, such written

134 statement and summary shall include a complete copy of all appraisals of the real property to be acquired
 135 that the state agency obtained prior to making an offer to acquire or initiating negotiations for the real
 136 property. The state agency shall provide its written statement of the amount it established as just
 137 compensation on its letterhead, which shall be signed by an authorized employee of such state agency.
 138 Where appropriate, the just compensation for the real property acquired and for damages to remaining real
 139 property shall be separately stated.

140 2. No owner shall be required to surrender possession of real property before the state agency pays
 141 the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit
 142 of the owner, (i) an amount not less than the state agency's approved appraisal of the fair market value of
 143 such property, if such an appraisal is required, or the current assessed value of such property for real estate
 144 tax purposes, unless the property has physically changed in a material and substantial way since the current
 145 assessment date such that the real estate tax assessment no longer represents a fair valuation of the
 146 property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater,
 147 or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

148 F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in
 149 an eminent domain proceeding.

150 **§ 25.1-230.1. Lost access and lost profits.**

151 A. For purposes of this section:

152 "Business" shall have the same meaning as set forth in § 25.1-400.

153 "Business profit" means the average net income for federal income tax purposes for the three years
 154 immediately prior to the later of (i) the date of valuation or (ii) the date the state agency or its contractor
 155 prevents the owner from using the land or any of the owner's other property rights are taken, for a business
 156 or farm operation located on the property taken.

157 ~~"Direct access" means ingress or egress on or off a public road, street, or highway at a location~~
 158 ~~where the property adjoins that road, street, or highway.~~

159 "Farm operation" shall have the same meaning as set forth in § 25.1-400.

160 B. The body determining just compensation shall include in its determination of damage to the
161 residue any loss in market value of the remaining property from lost access ~~caused by the taking or~~
162 ~~damaging of the property.~~ The body determining just compensation shall ascertain any reduction in value
163 for lost access, if any, that may accrue to the residue as provided in subsection A of § 25.1-230, ~~by reason~~
164 ~~of the taking and use by the petitioner. If such peculiar benefit or enhancement in value shall exceed the~~
165 ~~reduction in value, there shall be no recovery against the landowner for such excess. The body determining~~
166 ~~just compensation may not consider an injury or benefit that the property owner experiences in common~~
167 ~~with the general community, including off-site circuity of travel and diversion of traffic, arising from an~~
168 ~~exercise of the police power. The body determining just compensation shall ensure that any compensation~~
169 ~~awarded for lost access shall not be duplicated in the compensation otherwise awarded to the owner of the~~
170 ~~property taken or damaged.~~

171 C. The body determining just compensation shall include in its determination of just compensation
172 lost profits to the owner of a business or farm operation conducted on the property taken only if the owner
173 proves with reasonable certainty the amount of the loss and that the loss is directly and proximately caused
174 by the taking of the property through the exercise of eminent domain and the following conditions are
175 met:

176 1. The loss cannot be reasonably prevented by a relocation of the business or farm operation, or
177 by taking steps and adopting procedures that a reasonably prudent person would take and adopt;

178 2. The loss will not be included in relocation assistance provided pursuant to Chapter 4 (§ 25.1-
179 400 et seq.);

180 3. Compensation for the loss will not be duplicated in the compensation otherwise awarded to the
181 owner of the property taken or damaged; and

182 4. The loss shall be determined in accordance with generally accepted accounting principles
183 applied on a consistent basis.

184 D. Any and all liability for lost access shall be established and made a part of the award of just
185 compensation for damage to the residue of the property taken or damaged, and any and all liability for lost
186 profits shall be set forth specifically in the award. In a partial acquisition, in the event that the owner of

187 the property being condemned and the owner of the business or farm operation claiming lost profits are
 188 the same, then any enhancement or peculiar benefit shall be offset against both damage to the residue and
 189 lost profits.

190 E. It shall not be a requirement of any bona fide effort to purchase the property pursuant to § 25.1-
 191 204 or 33.2-1001 that the petitioner include any liability for lost profits in a written offer to purchase the
 192 property.

193 F. In any proceeding in which the owner of a business or farm operation seeks to recover lost
 194 profits, the owner shall provide the condemning authority with all federal income tax returns, if any,
 195 relating to the business or farm operation for which the owner seeks lost profits for a period of three years
 196 prior to the later of (i) the valuation date or (ii) the date the state agency or its contractor prevents the
 197 owner from using the land or any of the owner's other property rights are taken, and for each year thereafter
 198 during the pendency of the condemnation proceeding. The condemning authority shall not divulge the
 199 information provided pursuant to this subsection except in connection with the condemnation proceeding.
 200 Additionally, unless already named in the petition for condemnation, the owner may intervene in the
 201 proceeding by filing a motion to intervene accompanied by a petition for intervention setting forth the
 202 basis for the lost profits claim under this chapter. Proceedings to adjudicate lost profits may be bifurcated
 203 from the other proceedings to determine just compensation if the lost profits claim period will not expire
 204 until one year or later from the date of the filing of the petition for condemnation, but such bifurcation
 205 shall not prevent the entry of an order confirming indefeasible title to the land interests acquired by the
 206 condemning authority.

207 ~~G. Nothing in this section is intended to provide for compensation for inverse condemnation claims~~
 208 ~~for temporary interference with or interruption of a business or farm operation other than that which is~~
 209 ~~directly and proximately caused by a taking or damaging of property through the exercise of eminent~~
 210 ~~domain.~~

211 **§ 25.1-237. Payment of compensation and damages into court; vesting of title.**

212 Upon the return of the report of the body determining just compensation, and the confirmation,
 213 alteration, or modification thereof in the manner provided in this chapter, the sum so ascertained by the

214 court as compensation and damages, if any, to the property owners may be paid into court. The clerk shall
215 deposit such funds to the credit of the court in an account of a type that bears interest. Upon paying such
216 sum into court, title to the property and rights condemned shall vest in the petitioner to the extent prayed
217 for in the petition, unless such title shall have already vested in the petitioner in a manner otherwise
218 provided by law. The petitioner or its agent shall have the right to enter and construct its works or
219 improvements upon or through the property described in its petition.

220 § 25.1-245.1. Costs.

221 A. Except as otherwise provided in this chapter, all costs of the proceeding in the trial court that
222 are fixed by statute shall be taxed against the condemnor.

223 B. The court ~~may in its discretion tax as a cost a fee, not to exceed \$1,000,~~ shall order the
224 condemnor to pay to the owner reasonable costs and fees, not to exceed \$7,500, unless the court approves
225 a higher amount, for a survey for the ~~landowner~~ owner.

226 C. If an owner whose property is taken by condemnation under this title or under Title 33.2 is
227 awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25
228 percent or more greater than the amount of the condemnor's initial written offer made pursuant to § 25.1-
229 204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than attorney
230 fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering fees incurred
231 by the owner, for up to three experts or as many experts as are called by the condemnor, whichever is
232 greater, who testified at trial.

233 D. All costs on appeal shall be assessed and assessable in the manner provided by law and the
234 Rules of Court as in other civil cases.

235 E. The requirements of this section shall not apply to those condemnation actions initiated by a
236 public service company, public service corporation, railroad pursuant to the delegation of the power of
237 eminent domain granted in Title 56, or government utility corporation, as defined by § 1-219.1, involving
238 easements adjudged at less than \$10,000.

239 F. This section is to be liberally construed to effect its purpose of ensuring that owners receive the
240 full measure of just compensation to which they are constitutionally entitled, without that amount being
241 reduced by the costs of asserting their constitutional right to just compensation.

242 **§ 25.1-307. Content of certificates; recordation of certificates.**

243 A. A certificate shall set forth the description of the property being taken or damaged, and the
244 owner or owners, if known, of such property. If a temporary construction easement is being acquired, the
245 certificate shall set forth the calendar date on which it shall expire.

246 B. The authorized condemnor shall record a certificate of take or a certificate of deposit in the
247 clerk's office of the court where deeds are recorded. The clerk shall record the certificate in the deed book
248 and index it in the names of both (i) the person or persons who owned the land before the recordation of
249 the certificate and (ii) the authorized condemnor.

250 **§ 25.1-308. Effect of recordation of certificate; transfer of title or interest in property.**

251 A. Upon recordation of a certificate:

- 252 1. The interest or estate of the owner of the property described therein shall terminate;
- 253 2. The title to such property shall be vested in the authorized condemnor;
- 254 3. The owner shall have such interest or estate in the funds deposited with the court or represented
255 by the certificate of deposit as the owner had in the property taken or damaged; and
- 256 4. All liens by deed of trust, judgment or otherwise upon such property shall be transferred to such
257 funds.

258 B. The title in the authorized condemnor shall be defeasible until (i) the authorized condemnor and
259 such owner reach an agreement as provided in § 25.1-317, or (ii) the compensation for the taking or
260 damage to the property is determined by condemnation proceedings as provided in § 25.1-313.

261 C. If funds have been deposited with the court under a certificate of take, the clerk shall deposit
262 the funds so paid to the credit of the court in an account of a type that bears interest.

263 **§ 25.1-315. Awards in greater amounts than deposit; interest.**

264 A. If the amount of an award in a condemnation proceeding is greater than that deposited with the
265 court or represented by a certificate of deposit, the excess amount, together with interest accrued on such

266 excess amount, shall be paid into court for the person or persons entitled thereto. The clerk shall deposit
267 such funds to the credit of the court in an account of a type that bears interest.

268 B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set
269 forth in § 8.01-382, computed from the date of such deposit to the date of payment into court and be paid
270 into court for the person or persons entitled thereto. However, any interest that accrued before July 1,
271 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981,
272 shall be paid at the rate of six percent, and any interest accruing thereafter and prior to July 1, 1994, shall
273 be paid at the rate of eight percent.

274 **§ 25.1-318. Petition by owner for determination of just compensation.**

275 A. The owner of property that an authorized condemnor has entered and taken possession of, or
276 taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the
277 locality in which the greater portion of the property lies for the appointment of commissioners or the
278 empanelment of a jury to determine just compensation for the property taken and damages done, if any,
279 to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) if (i) the owner and the authorized
280 condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized
281 condemnor:

282 1. Has not completed the construction of the contemplated improvements upon the property after
283 a reasonable time for such construction has elapsed; or

284 2. Has not instituted condemnation proceedings within:

285 a. Sixty days after completion of the construction of the contemplated improvements upon the
286 property;

287 b. One hundred eighty days after the authorized condemnor has entered upon and taken possession
288 of the property, regardless of whether the construction of the contemplated improvements has been
289 completed; or

290 c. One hundred eighty days after the recordation of a certificate.

291 B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before
292 it is filed in the court. The authorized condemnor shall file an answer thereto within five days after the

293 filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided
294 in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the
295 owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages
296 done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§
297 25.1-200 et seq.) insofar as the same may be applicable, except that the owner shall have the burden of
298 proceeding with the evidence as to just compensation. The authorized condemnor shall reimburse the
299 owner for his fees and costs charged by a lienholder, including filing fees and attorney fees, incurred in
300 filing the owner's petition.

301 **§ 25.1-319. Certificates of completion.**

302 Upon completion of construction of any public use project for which a portion of private property
303 was acquired by certificate, the condemnor shall, within 90 days of completion of construction, record a
304 certificate of completion in the clerk's office of the court where deeds are recorded. Such certificate of
305 completion shall state that construction of the public use project for which the property was taken is
306 complete and any temporary acquisitions have terminated. The clerk shall record the certificate of
307 completion in the deed book and index in it the names of both (i) the person or persons who own the land
308 at the time of the recordation of the certificate of completion and (ii) the condemnor.

309 **§ 33.2-1016. Procedure in general; suits in name of Commissioner of Highways; survival;**
310 **validation of suits; notice of filing.**

311 A. Proceedings for condemnation under this article shall be instituted and conducted in accordance
312 with the procedures provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, except that the provisions of
313 §§ 33.2-1018 through ~~33.2-1029~~ 33.2-1029.1 shall be applicable to such proceedings.

314 B. All suits shall be instituted and conducted in the name of the Commissioner of Highways as
315 petitioner without naming the individual who may be such Commissioner of Highways or acting
316 Commissioner of Highways. In the event of the death, removal, retirement, or resignation of the
317 Commissioner of Highways or acting Commissioner of Highways, the suit shall automatically survive to
318 a successor Commissioner of Highways or acting Commissioner of Highways. All suits heretofore filed
319 in accordance with the provisions of this section are hereby ratified, validated, and confirmed.

320 C. In addition to any other notices required to be served pursuant to this section, in any proceeding
321 instituted by the Commissioner of Highways under this title, a copy of the notice of the filing of the
322 petition also shall be served, in the same manner as such notice is served upon owners, upon any person
323 owning structures or improvements for which an outdoor advertising permit has been issued by the
324 Commissioner of Highways pursuant to § 33.2-1208.

325 **§ 33.2-1018. Authority to take possession and title to property before or during**
326 **condemnation; purpose and intent of provisions.**

327 In addition to the exercise of the power of eminent domain prior to the entry upon land being
328 condemned, as provided in this article, the Commissioner of Highways is authorized to acquire title and
329 to enter upon and take possession of such property and rights-of-way, for the purposes set out in § 33.2-
330 1001, as the Commissioner of Highways may deem necessary, and proceed with the construction of such
331 highway, such taking to be made pursuant to §§ 33.2-1019 through ~~33.2-1029~~ 33.2-1029.1.

332 It is the intention of this article to provide that such property and rights-of-way may, in the
333 discretion of the Commissioner of Highways, be condemned during or after the construction of the
334 highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in
335 condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this
336 article shall apply, whether the property and rights-of-way are condemned before, during, or after the
337 construction of the highway. However, the authorities constructing such highway under the authority of
338 this article shall use diligence to protect growing crops and pastures and to prevent damage to any property
339 not taken. So far as possible all rights-of-way shall be acquired or contracted for before any condemnation
340 is resorted to.

341 **§ 33.2-1019. Payments into court or filing certificate of deposit before entering upon land.**

342 A. Before entering upon or taking possession of land pursuant to § 33.2-1018, the Commissioner
343 of Highways shall either:

344 1. Pay into the court wherein condemnation proceedings are pending or are to be instituted such
345 sum as is required by subsection B; or

346 2. File with the court wherein condemnation proceedings are pending or are to be instituted a
347 certificate of deposit issued by the Commissioner of Highways for such sum as is required by subsection
348 B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such
349 court.

350 B. The amount to be paid into the court as provided in subdivision A 1 or represented by a
351 certificate of deposit as provided in subdivision A 2 shall be the amount that the Commissioner of
352 Highways estimates to be the fair value of the land taken, or interest therein sought, and damage done,
353 which estimate shall be based on a bona fide appraisal if required by § 25.1-417; however, such estimate
354 shall not be less than the current assessed value of the land for real estate tax purposes, unless the property
355 has physically changed in a material and substantial way since the current assessment date such that the
356 real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for
357 which the assessment has been made is to be acquired.

358 C. If the Commissioner of Highways makes a payment into court as provided in subdivision A 1,
359 the court shall also record a certificate of take pursuant to § 33.2-1021. The clerk shall deposit such funds
360 to the credit of the court in an account of a type that bears interest.

361 D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid
362 by the Commissioner of Highways.

363 E. The Commissioner of Highways shall not be permitted to force relocation on improved owner-
364 occupied property until the owner is permitted to withdraw the funds represented by the certificate filed
365 with the court. However, if the owner refuses to withdraw the funds represented by the certificate filed
366 with the court or if the Commissioner of Highways reasonably believes that the owner does not possess
367 clear title to the property being taken, that ownership of the property is disputed, or that certain owners
368 cannot be located, the Commissioner of Highways may petition the court to establish that the owner does
369 not possess clear title, that the ownership of the property is in dispute, that certain owners cannot be
370 located, or that the owner has refused to withdraw the funds represented by the certificate filed with the
371 court, and request that the Commissioner of Highways be given authority to force relocation.

372 F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in
373 an eminent domain proceeding.

374 **§ 33.2-1022. Certificates to describe land and list owner.**

375 The certificate shall set forth the description of the land or interest therein being taken or damaged
376 and, if known, the owner. If a temporary construction easement is being acquired, the certificate shall set
377 forth the calendar date on which it shall expire.

378 **§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.**

379 A. If the amount of an award in a condemnation proceeding is greater than that deposited with the
380 court or represented by a certificate of deposit, the excess amount, together with interest accrued on such
381 excess amount, shall be paid into court for the person entitled thereto. The clerk shall deposit such funds
382 to the credit of the court in an account of a type that bears interest.

383 B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set
384 forth in § 8.01-382, computed from the date of such deposit to the date of payment into court, and shall
385 be paid into court for the person or persons entitled thereto. However, any (i) interest accruing after June
386 30, 1970, and prior to July 1, 1981, shall be paid at the rate of six percent; (ii) interest accruing after June
387 30, 1981, and prior to July 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing
388 after June 30, 1994, and prior to July 1, 2003, shall be paid at the general account composite rate, compiled
389 by the Department of the Treasury for the month in which the award is rendered.

390 C. If the amount of an award in a condemnation proceeding is less than that deposited with the
391 court or represented by a certificate of deposit, and the person or persons entitled thereto have received a
392 distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the
393 amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to §
394 6621(a)(2) of the Internal Revenue Code of 1954, as amended. If any person has been paid a greater sum
395 than that to which he is entitled as determined by the award, judgment shall be entered for the
396 Commissioner of Highways against such person for the amount of such excess and interest. However, the
397 Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in the
398 event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land

399 containing a dwelling, multiple-family dwelling, or building used for commercial purposes at the time of
400 initiation of negotiations for the acquisition of such property.

401 **§ 33.2-1029.1. Petition by owner for determination of just compensation.**

402 A. The owner of property that the Commissioner of Highways has entered and taken position of,
403 or taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the
404 locality in which the greater portion of the property lies for the appointment of commissioners or the
405 empanelment of a jury to determine just compensation for the property taken and damage done, if any, to
406 such property, as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 if (i) the owner and the
407 Commissioner of Highways have not reached an agreement as to compensation and damages, if any, and
408 (ii) the Commissioner of Highways:

409 1. Has not completed the construction of the contemplated improvements upon the property after
410 a reasonable time for such construction has elapsed; or

411 2. Has not instituted condemnation proceedings within:

412 a. Sixty days after completion of the construction of the contemplated improvements upon the
413 property;

414 b. One hundred and eighty days after the Commissioner of Highways has entered upon and taken
415 possession of the property, regardless of whether the construction of the contemplated improvements has
416 been completed; or

417 c. One hundred and eighty days after the recordation of a certificate.

418 B. A copy of such petition shall be served on the Commissioner of Highways at least 10 days
419 before it is filed in the court. The Commissioner of Highways shall file an answer within five days after
420 the filing of the petition. If the courts finds that the conditions prerequisite for such appointment as
421 provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as
422 requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken
423 and damages done, if any. The proceedings shall thereafter be governed by the procedures prescribed in
424 Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as they may be applicable, except that the owner shall
425 have the burden of proceeding with the evidence as to just compensation. The Commissioner of Highways

426 shall reimburse the owner for his fees and costs, including filing fees and attorney fees, incurred in filing
427 the owner's petition.

428 **2. That § 33.2-1029 of the Code of Virginia is repealed.**

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